

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8146 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

YUSUF SHA AHAMAD SHA DIVAN

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HL JANI LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This special civil application is directed against the detention order dtd. 12th August, 1999 passed by the District Magistrate, Panchmahals at Godhra, whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti-social

Activities Act, 1985 ('PASA Act' for short), 1985. The petitioner is detained in District Jail, Porbandar, since the date of order of detention.

2. No reply to the petition has been filed by any of the respondents. Mr. H.L. Jani, learned A.G.P. has submitted that his representation has been rejected and the detention order has already been confirmed by the Board.

3. The grounds of detention enclosed with the detention order show that eleven criminal cases were registered against the petitioner under the Prohibition Act, two in 1996, two in 1997, six in 1998 and three in 1999. Some cases are pending for trial whereas in some cases, investigation was still pending but he has been released on bail in all cases. The detaining authority has mentioned that the petitioner is a bootlegger and is engaged in antisocial activities and it was necessary to detain him under the provisions of PASA Act. The detaining authority has mentioned that in the facts of this case, other alternatives provided under the Act were not sufficient to deter the petitioner from continuing his antisocial activities and it was necessary to detain him.

4. Having heard both the sides and having gone through the grounds of detention, I find that as per the law laid down by the Supreme Court in several decisions, no case of threat of breach to the public order is made out, even if all the allegations as levelled against the petitioner are taken to be correct on their face value. At the most it is a case of breach of law and order. The impugned detention order, therefore, cannot be sustained in the eye of law, as existence of threat to the public order is the pre-condition for detention order to be passed. The impugned detention order dtd. 12th August, 1999, passed by the District Magistrate, Panchmahals at Godhra is hereby quashed and set aside. It is directed that the petitioner-detenu namely Yusufsha Ahamadsha Divan, shall be released forthwith, if not required under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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